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NEW MEXICO ENVIRONMENT DEPARTMENT

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

Original via FedEx-Copy via Electronic Mail

August 1, 2019

Mr. Charles Maguire, Director
Water Quality Protection Division (6WD)
U. S. Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75202

Re: State Certification

Dear Mr. Maguire:

Enclosed, please find the state certification for the following proposed National Pollutant Discharge Elimination System (NPDES) permit NM0030180, Chevron Mining, Inc., Ancho, Gachupin and Brackett Mines.

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, sections 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978) and complies with state Water Quality Standards [*State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC)*], the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 NMAC), USEPA jointly with NMED issued a public notice of the draft permit and announced a public comment period posted on the NMED web site at <https://www.env.nm.gov/surface-water-quality/public-notices/>. The NMED public comment period ended on July 29, 2019. NMED received comments from a Permittee representatives with several requests concerning the filtration size used during collection of effluent samples and the name of one of the receiving waters which were considered in this certification.

August 1, 2019
Mr. Maguire
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Sincerely,

/s/Shelly Lemon

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)

Ms. Evelyn Rosborough, USEPA (6WDPN) via e-mail

Mr. Brent Larsen, USEPA (6WDPE) via e-mail

Mr. Tung Nguyen, Permit Writer, USEPA (6WDPE) via e-mail

Mr. Clark Rushing, President, Chevron Mining, Inc., 1500 Louisiana Street, Houston Texas 77002 via USPS
Certified Mail 7017 2400 0000 5585 3407

Mr. Ian Robb, Project Manager, Chevron Environmental Management Company via e-mail

Mr. Gus Holm, Manager, Vermejo Park, LLC/Vermejo Coal, LLC via e-mail

Mr. James R. Smith, EMNRD via e-mail

Mr. David Gray, Acting Regional Administrator
Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, TX 75202

August 1, 2019

STATE CERTIFICATION

RE: Chevron Mining, Inc. - Ancho, Gachupin and Brackett Mines – NM0030180

Dear Mr. Gray:

The New Mexico Environment Department has examined the proposed NPDES permit above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

- ☐ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law
- ☒ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)
- ☐ denies certification for the reasons stated in the attachment
- ☐ waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

/s/Shelly Lemon

Shelly Lemon
Bureau Chief
Surface Water Quality Bureau

Chevron Mining, Inc. - Ancho, Gachupin and Brackett Mines
State Comments on the Proposed NPDES Permit
NM0030180
August 1, 2019

The following revisions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards (NMWQS) adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [NMSA 1978, §§ 74-6-1 to -17]. State of New Mexico (State) WQS are published in the document entitled Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission (WQCC), 20.6.4 New Mexico Administrative Code (NMAC) as amended by the WQCC and approved by the United States Environmental Protection Agency (EPA or USEPA) as of August 11, 2017, as amended September 12, 2018.

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that permit *limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard...*

Section 20.6.4.900.I (1) and (2) NMAC [2018] states “*For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department.*” The Department has developed standard operating procedures and assessment protocols for the purpose of determining attainment of uses that are available for review from the Department’s Surface Water Quality Bureau website. Standard Operating Procedures include 8.2 Chemical Sampling in Lotic Environments and NPDES Wastewater Sampling.

Conditions of Certification:

1. Total Recoverable Aluminum in an effluent sample that is filtered to minimize mineral phases using a 1-micron (μm) filter may be substituted at the Ancho, Gachupin and Brackett Mines for mineral phases as specified by the department for purposes of permit compliance assessment based on a review of information submitted by the Permittee in the permit records per Shelly Lemon, Bureau Chief, Surface Water Quality Bureau, New Mexico Environment Department.

The attachment to the January 30, 2017 letter from NMED Surface Water Quality Bureau to Mr. Ian Robb, Chevron Environmental Management Company states:

The Department concludes with the exceptions noted above that the (1) lack of toxicity of raw water samples, (2) the demonstration of the non-toxic nature of most of the Al was likely of Kaolinitic origin (Al_2Si_2), and (3) the conclusion that the 1.0 μm filter size would allow passage of both dissolved and colloidal (0.011 to 1.0 μm range)^{1, 2} Al associated with the toxic fraction is supportable for compliance testing with appropriate attention to the problems associated with processing turbid, high volume sampling.

¹ Langmuir D. 1997, pp.344 In *Aqueous Environmental Geochemistry*. Prentice-Hall, Inc. New Jersey, USA.

² Stumm W & JI Morgan. 1996, pp. 821 In *Aquatic Chemistry: Chemical Equilibria and Rates in Natural Waters*

3rd Ed. John Wiley & Sons, New York, NY, USA.

As the information submitted is specific to the total recoverable aluminum mineral phases found at this specific location, the above substituted filtration size does not apply for purposes of determining attainment of uses, other metals or effluent monitoring at other locations. The permit has re-opener conditions should new information become available. The substitution of a 1-micron filter would be re-evaluated upon any future permit application submittal and/or renewal.

Comments that are not Conditions of Certification:

1. EPA should correct the name of receiving waters in the Final Permit as indicated in comments/requests by Mr. Ian Robb, Project Manager, Chevron Environmental Management Company to EPA dated July 23, 2019.